IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12004 of 2003

with

SPECIAL CIVIL APPLICATION No 2599 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILESH P. JOSHI

Versus

DISTRICT JUDGE

Appearance:

1. Special Civil Application No. 12004 of 2003
   MR IS SUPEHIA for Petitioner No. 1
   MR JB PARDIWALA for Respondent No. 1
   RULE SERVED for Respondent No. 1-2
   GOVERNMENT PLEADER for Respondent No. 2
2. Special Civil Application No. 2599 of 2004
   MR IS SUPEHIA for Petitioner No. 1
   GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 27/08/2004

COMMON ORAL JUDGEMENT

Both these petitions raise identical issue of grant of higher pay scale under the Government Resolution on the ground that inter-district service and their service which was rendered in previous district or previous service is not taken into consideration for the purpose of granting higher pay scale.

2 The petitioner of Special Civil Application No.12004 of 2003 joined service as a junior clerk on 17th November, 1992 and then was transferred on 1st November, 1995 to Amreli District on his request. The petitioner has passed his departmental examination in the year 1999 and therefore by the application dated 19.11.2001 he requested for grant of higher grade scale since he completed nine years of service as junior clerk from 17.11.1992. Respondent no.1 by the order dated 17th June, 2002 granted higher scale to the petitioner with effect from 17th November, 2001 in view of the Government Resolution dated 16th August, 1994, subject to the audit. Thereafter by the letter dated 23rd July, 2002 respondent no.2 informed respondent no.1 to put up the case of the petitioner on the basis that his earlier case rendered in Jamnagar district is to be counted towards grant of higher grade scale. The petitioner gave his clarification on 13th August, 2002 and relied upon judgment of the Hon'ble Apex Court and this Court rendered in Special Civil Application No.5403 of 1996 on 10.9.1999. The respondent no.2 by letter dated 25th October, 2002 after calling for the transfer order of the petitioner rejected the request of the petitioner by the letter dated 29.11.2002 on the ground that the service rendered by the petitioner in former district is not to be counted for the purpose of higher grade scale in view of paragraph 3(2) of the Resolution dated 16.8.1994.

3 The respondents have appeared and have contended that the petitioner has been transferred at his own request and joined at Amreli. As per the resolution dated 31.3.1994 and 16.8.1994 passed by the Finance Department the seniority of the petitioner is to be considered afresh from the date of joining in Amreli District and on completion of 9 years of service at Amreli the petitioner was given the benefit of higher pay scale with effect form 17.11.2001. In view of the resolutions the petitioner is not entitled to get the

higher pay scale from 17.11.2001. The petitioner was earlier working in Jamnagar District as Junior Clerk and his date of appointment was 17.11.1992. The petitioner has not complied with the provisions of paragraph 3(2) of the Resolution dated 16.8.1994. The petitioner is transferred from another district and the same is inter-district transfer. The service rendered by the petitioner in Jamnagar District cannot be taken into consideration in Amreli District and therefore he is not entitled to get the benefit of higher pay scale with effect from 17.11.2001 in view of resolution dated 16.8.1994.

4 The petitioner of Special Civil Application No.2599 of 2004 joined service as a Talati cum Mantri on 30th March, 1991 under Bhavnagar District Panchayat. He was transferred on 3rd February, 1996 to Jamnagar District on his request and he resumed the duties at Jamanagar on 1.6.1996. It appears that the Taluka Development Officer addressed a letter to respondent no.2 recommending grant of higher grade scale to the petitioner as he has completed 9 years of service including the service rendered in Bhavnagar District Panchayat. Respondent no.2 by the letter dated 30th June, 2003 informed the Taluka Development Officer that the petitioner would be eligible for the 1st higher grade scale on completion of 9 years of service in Jamnagar District Panchayat.

5 Respondent no.2 filed affidavit-in-reply stating that the order passed by the District Panchayat through its Deputy Development Officer is legal and valid as it was based upon the Government Resolution dated 16.8.1994; that the petitioner is not entitled to get the benefit of higher grade scale as he has not completed 9 years of service in Jamnagar District as Talati-cum-Mantri since he joined the District Panchayat, Jamnagar, on 1st June, 1996 on inter-district transfer; that the said order of transfer was passed under the statutory rules known as the Gujarat Panchayat Services (Transfer) Rules, 1995 and the petitioner will be completing 9 years of service in the year 2005. The petitioner is therefore entitled The petitioner has passed his departmental examination in the year 1999 and therefore by the application dated 19.11.2001 he requested for grant of higher grade scale since he completed nine years of service as junior clerk from 17.11.1992. Respondent no.1 by the order dated 17th June, 2002 granted higher scale to the petitioner with effect from 17th November, 2001 in view of the Government Resolution dated 16th August, 1994, subject to the audit. Thereafter by the letter dated 23rd July, 2002 respondent

no.2 informed respondent no.1 to put up the case of the petitioner on the basis that his earlier case rendered in Jamnagar district is to be counted towards grant of higher grade scale. The petitioner gave his clarification on 13th August, 2002 and relied upon judgment of the Hon'ble Apex Court and this Court rendered in Special Civil Application No.5403 of 1996 on 10.9.1999. The respondent no.2 by letter dated 25th October, 2002 after calling for the transfer order of the petitioner rejected the request of the petitioner by the letter dated 29.11.2002 on the ground that the service rendered by the petitioner in former district is not to be counted for the purpose of higher grade scale in view of paragraph 3(2) of the Resolution dated 16.8.1994.

6 Mr Supehia, learned advocate for the petitioners, has relied upon the decision of Division Bench of this Court rendered in Letters Patent Appeal No.229 of 2003 dated 5th May, 2003. In para 7 of the said judgment it is observed as under:-

"7. After having heard the learned advocates appearing for the parties and after examining and evaluating the factual profile of the entire matter and also after having considered the authorities cited before us, we are of the view that the order passed by the learned single Judge, requires an interference by us while exercising appellate jurisdiction under clause 15 of the Letters Patent. The Hon'ble Supreme Court has, in the case of Dwejen Chandra Sarkar (supra) specifically held "that the past service of the appellants is to be reckoned for the limited purpose of eligibility computing the number of qualifying service, to enable them to claim the higher grade under the scheme of time bound promotions." The Hon'ble Supreme Court has further held that the appellants will be entitled to the higher grade from the date on which they have completed 16 years service in the Rehabilitation Department also along with the service in the P.&T. Department. They will be so entitled as long as they remained in the post of Assistant and till their normal promotion to a higher post according to Rules. Even the Division Bench of this Court in the case of State of Gujarat vs. Ajitsinh Chaturji Rathod, L.P.A. No.779 of 2000, decided on 4.12.2000 taken the view that "mere transfer from Surat to Mehsana on the condition to be at the bottom, at the new

> station, upon request, would not, in any way, adversely affect the right to claim benefit of higher grade under the relevant G.R." In our view, the learned single Judge is, therefore, not right in holding that for conferring of benefit of higher grade scale on completion of 9 years' service, the service rendered in Mehsana District Panchayat alone can be considered. This view is contrary to the view taken by the Hon'ble Supreme Court, in the case of Dwijen Chandra Sarkar (supra), and the Division Bench judgment of this court in the case of State of Gujarat vs. Ajitsinh Chaturji Rathod (supra)."

In this view of the matter, Mr Supehia submitted that the contentions raised by the respondent is misconceived and the petitioners are entitled for higher pay scale.

7 In view of the observations made by this Court in Special Civil Application No.10469 of 1999, dated 12th September, 2002, and judgment of Division Bench in Letters Patent Appeal No.779 of 2000, the petitioners are entitled for higher pay scale when they have completed 9 years of service including earlier service which they performed in the earlier post.

8 In the result, the petitions are allowed. The orders dated 29th November, 2002 passed by respondent no.2 in Special Civil Application No.12004 of 2003 and also the order dated 30th June, 2003 passed by respondent no.2 in Special Civil Application No.2599 of 2004 are set aside. The respondent no.2 in each of the petitions is directed to approve the order/letter of respondent no.1 and grant higher pay scale to the petitioner and make necessary payment within a period of 2 months from the date of receipt of this order.

9 Rule is made absolute accordingly in each of the petitions.

(K.S.Jhaveri, J.)

*mohd